

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1050 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KUNDANBEN KESHAVLAL YAGNIK

Versus

ADMINISTRATIVE OFFICER

Appearance:

Special Civil Application No. 1050 of 1990

MR MB GANDHI for Petitioner

MR BP TANNA for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/05/2000

CAV JUDGEMENT

The petitioner Kundenben Keshavlal Yagnik was a
Primary School Teacher and the date of birth of the
petitioner is 12-11-1931. According to the rules of the

Municipal School Board, the retirement age of the school teacher is 58 years. The State Government by its Resolution No. PRE.1389/743/K/Sachivalaya Gandhinagar dated 21-3-1989 provided that the primary school teachers would retire on superannuation according to their date of birth but they are to be continued till the end of the academic term. There are two academic terms in an academic year. The first one is from 1st June to 31st October, the second term is from 1st November to 31st May. It is contended in the petition that according to the resolution of the Government, as adopted by the Municipal Board, if any teacher retires during the vacation then such employee will be continued till the end of the month on which the vacation falls. It is stated that, in the year 1989 Diwali vacation was upto 12-11-1989 and the petitioner, according to her date of birth, has retired on 12-11-89, but continued till the end of November 1989 as per the clause of the resolution. It is contended by the petitioner that 12-11-1989 was Sunday and therefore, her retirement should be deemed to be taken place after the vacation, and therefore she should be allowed to continue till 31-5-90. The benefit of second term of the academic year was not allowed and having felt aggrieved by the order of her retirement on 30-11-1989 the petitioner has filed this petition for a direction that, she should be reinstated in service and she is entitled to the pay and allowance of upto 31st May 1990.

2. The claim of the petitioner has been resisted by the Municipal Board. The Board contended that the primary teachers of the Municipal School Board will retire on the actual date of retirement, but they will continue on the post till the end of the term of the academic session, and for such reappointment no pensionary benefit will be available to the primary school teachers. However there was a confusion about the date of retirement of the primary teachers who will retire during vacation and the matter was referred to the Government for a decision and the Government vide its reply dated 5-7-1989 clarified that; in case of teachers whose date of superannuation falls in the vacation, they can be continued till the last date of that month. It is therefore, contended by the respondent Board that, no illegality has been committed in retiring the petitioner on 30-11-1989 as her date of retirement falls within vacation.

3. Mr. M.B. Gandhi, learned counsel appearing on behalf of the petitioner submitted that in the year 1989 Diwali vacation was upto 12-11-89 and 12-11-89 was Sunday

and therefore this date cannot be treated as falling within vacation. Sundays are public holidays and therefore it should be deemed that Diwali vacation was upto 11-11-89. Since the petitioner retired on 12-11-89 it cannot be said that she has retired during vacation and therefore she should have been continued by the respondent Municipal Board till 31-5-90 when the second term of the academic session ends. It is also submitted by the learned counsel for the petitioner that the petitioner was not allowed to work in the school beyond 30-11-89 and the Board has thereby committed an injustice on the petitioner. It is argued that since the Board has illegally retired the petitioner before her actual retirement, she is entitled to pay and allowance for the period from 1-12-89 to 31-5-90. It is also contended that in schools long vacation is during the summer that is in May and June. In Diwali though the schools remain closed for about 14 to 15 days it cannot be treated as a vacation. On the contrary it should be taken as Diwali holidays and the interpretation given by the Government regarding retirement of primary teachers during vacation should not apply during the Diwali holidays.

4. Ms. Kerrawala, learned counsel appearing on behalf of the Municipal Board argued that the Scheme of retiring the teachers at the end of two terms of an academic year was first taken by the Government and the Municipal Board has adopted the said Government Scheme. The scheme was framed with a view to protect the interest of the students. If any teacher retires during the academic session, this may adversely affect on the students and therefore the Government has framed the scheme for retiring the teachers during the end of the term of the academic session. There are two terms in one academic session, one commencing from 1st June to 31st October and the second term starting from 1st November to 31st May. Ms. Kerrawala submitted that, there was a confusion about superannuation for the teachers whose date of retirement falls during vacation. The matter has been clarified by the Government and the Government in its letter dated 5-7-89 has made it clear that if the date of superannuation of any teacher falls during vacation such teacher will be continued on job till the last date of the month on which the vacation falls. Learned counsel for the respondent consequently submitted that the Diwali vacation was upto 12-11-89 and the date of superannuation of the petitioner fell on 12-11-89 and therefore according to the scheme the petitioner was asked to retire on 31-11-89, that is the last date of the month on which the vacation fell.

5. I have gone through the schemes of the Government as adopted by the Municipal Board. The scheme has been framed by the Government and it has been amended from time to time. According to the last amendment as adopted by the Board provides that, the primary teachers of the Municipal School Board should be retired on their actual date of superannuation and thereafter they should be continued till the end of the term on reappointment basis.

6. After hearing learned counsel of both the parties and after going through the different resolutions passed by the Government and adopted by the Municipal Board, it appears that the primary teachers of the Board will retire on 31st May and 31st October. These two days have been fixed for actual retirement of the primary teachers. However it has been further provided that, such teachers will go on superannuation on the date of their actual retirement and they will be continued till the end of the term on reappointment basis and their salary would be fixed as per Rule 330 (B) of the Bombay Civil Services Rules, 1959. The pension or pensionary benefits will not be available to the teachers for such reappointment or continuance in service. Apart from the aforesaid general provisions of retirement on two dates, that is on 31st May and 31st October, a special provision has been made that if the date of superannuation of a teacher falls in vacation, then such teacher will be continued till the last date of the month on which the vacation falls. In any case even if during the period of vacation the second term starts then also such teacher will not be continued till the end of the term. While clarifying the position by the Government in letter dated 5-7-89 one example has been given that, in the year 1989 summer vacation was from 8-5-89 to 4-6-89 and a teacher whose actual date of retirement is 5th May 1989, he will retire on 31st May 1989. In the said example it appears that the Government has dealt with the case of a teacher whose date of retirement do not fall within vacation, that is during the period from 8-5-89 to 4-6-89 because the actual retirement is on 5-5-89, which is prior to the date of commencement of the vacation. Therefore it is obvious that the example given by the Government is in respect of a teacher whose date of retirement do not fall during vacation.

7. For better understanding of the provision relevant policy of the circular is reproduced below:-

"... The teachers whose date of retirement due to age limit (superannuation) falls during

vacation period, they will continue till the end of the month and in any case if during that period the second term starts then also they will not be continued till the end of the term. "

On a plain reading of the aforesaid provision it is evident that two conditions must be satisfied to attract the aforesaid provision. Firstly a teacher must retire prior to commencement of a new term, secondly the new term must commence during vacation. An example can make the situation clear. If in any academic year the vacation is from 20th October to 5th November and the actual date of superannuation of a primary teacher is on 28th October and in that case such teacher will be allowed to continue till 30th November and the teacher cannot be allowed to continue till the end of the term that is 31st. May, eventhough during vacation the second term commences from 1st November.

8. In the instant case the actual date of superannuation of the petitioner is 12-11-89, which is during the second term of the academic session. Eventhough 12-11-89 was included in Diwali vacation, this must be held to have within the vacation during the second term, that is 1st November to 31st May. However in the instant case it cannot be said that during vacation another term commences. The object of making special provision regarding continuation of primary teachers whose date of retirement falls during vacation is to overcome a situation so that the teachers may not get unnecessary continuation by reappointment. It appears that the teachers will retire on two dates that is on the end of two terms of one academic year. This is the general provision regarding retirement of teachers in the schools. The special provision has been made to overcome a situation so that the primary teachers shall not unnecessarily continued in their service who will retire during vacation.

9. In the present case the petitioner's actual date of retirement is 12-11-89 which falls during the second term of the academic year. According to the policy of the Government, as adopted by the Municipal Board she should have been continued till 31st May 1990. Ms. Kerrawala learned counsel appearing on behalf of the Board submitted that, according to the Government resolution and clarification many teachers have been retired from service whose date of superannuation falls during vacation by giving them the benefit of continuation in service till the end of the month on

which the vacation falls. Learned counsel submitted that any contrary interpretation will re-open cases of many primary teachers who have already accepted their retirement on the aforesaid clarification of the Government. It is also submitted by Ms. Kerrawala that if the cases of such retired teachers are now re-opened on the basis of any contrary interpretation then this will involve huge financial expenditure which the Board may not be able to bear. Learned counsel therefore submitted that if the Court holds any different view and do not agree with the clarification given by the Government, then, the clarification given by this Court on this point may be given prospective effect.

10. It appears that, in the instant case the petitioner has also accepted her retirement on 30-11-89. However the petitioner having been felt aggrieved filed the present writ petition after her actual retirement from service. The point raised by the petitioner that 12-11-89 which is Sunday should not be taken as part of holidays is not acceptable because holidays or vacation may include public holidays, that is Sundays.

11. Having regard to the submission of the learned counsel for the respondent that many cases of retired teachers will be re-opened if the interpretation given by me as above in respect of special provision regarding retirement of primary teachers whose actual date of retirement falls during vacation will involve huge expenditure on the part of the Municipal Board, I am of the view that the interpretation of the Special Provision as indicated above should have prospective effect. The respondent Municipal Board should apply the special provisions regarding retirement of teachers whose actual date of retirement falls during vacation only when the two conditions as indicated above are satisfied. Having regard to the fact that this interpretation will have to the effect of re-opening of many cases and will involve huge financial expenditure, It is ordered that this interpretation will be effective from the date of pronouncement of present judgment & order. Accordingly even if the petitioner was entitled to continue till 31st May 1990, but having regard to the peculiar fact & circumstances of the case I am not passing any order for pay or arrears thereof till 31st May 1990.

12. This writ petition is accordingly disposed of. Rule is made absolute to the above said extent. I make no order as to costs.

Dt: 10-5-2000

(P.K. Sarkar, J)

/vgn